

Internal Revenue Service

Department of the Treasury

Washington, DC 20224

Number: **201208033**

Release Date: 2/24/2012

Index Number: 9100.11-00, 472.01-00

Third Party Communication: None

Date of Communication: Not Applicable

Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:ITA:B06

PLR-132739-11

Date:

November 28, 2011

Attn:

Legend:

Parent =

Taxpayer =

Date 1 =

State A =

Date 2 =

Year 1 =

Date 3 =

Year 2 =

Year 3 =

Dear

This ruling responds to a letter submitted by Parent's authorized representatives on behalf of Taxpayer requesting an extension of time under sections 301.9100-1 and 301.9100-3 of the Procedure and Administration Regulations to file Forms 970, *Application To Use LIFO Inventory Method*, for the taxable year ended Date 1.

Facts

Parent is the parent corporation of an affiliated group of entities that files consolidated federal income tax returns on the basis of a 52/53 week ending on the Saturday closest to December 31. Included in these returns is Taxpayer. Taxpayer is a corporation organized under the laws of State A.

On Date 2 in Year 1, Parent acquired Taxpayer in a stock acquisition and Taxpayer became a wholly-owned subsidiary of Parent. As a result of the acquisition, Taxpayer became a member of the Parent consolidated group. The Year 1 Form 1120, *U.S. Corporation Income Tax Return*, filed for the Parent consolidated group, included Taxpayer for the period Date 3 through Date 1.

In Year 2, Parent and Taxpayer merged in a statutory merger with Parent as the surviving corporation. Taxpayer represents that the provisions of section 381(a) applied to the merger.

Prior to its acquisition by Parent, Taxpayer valued its inventories using the first-in, first-out (FIFO) method. After the acquisition, Taxpayer began using the last-in, first-out (LIFO) method for its tax and financial statement purposes. Upon filing the Year 1 consolidated return, however, Parent did not attach Form 970 on behalf of Taxpayer to allow Taxpayer to elect to use the LIFO inventory method. Taxpayer has continued to impermissibly use the LIFO inventory method for tax and financial purposes.

In Year 3, while auditing Parent's financial statements, an accounting firm inquired about the Parent consolidated group's treatment of inventories. Parent's tax department determined that Taxpayer's inventory was improperly being reported on the LIFO method for tax purposes because Parent had failed to timely file Form 970 for the Year 1 taxable year on behalf of Taxpayer.

Taxpayer represents that the LIFO conformity requirement of section 1.472-2(e) of the Income Tax Regulations is satisfied as Taxpayer's inventory has continually been valued using the LIFO inventory method for financial reporting purposes since Taxpayer began using LIFO for tax purposes, for the year ended Date 1.

Law and Analysis

Section 472 of the Internal Revenue Code provides that a taxpayer may use the LIFO method in inventorying goods specified in an application to use such method filed at such time and in such manner as the Secretary may prescribe.

Section 1.472-3 provides that the LIFO inventory method may be adopted and used only if the taxpayer files with its income tax return for the taxable year as of the close of which the method is first to be used a statement of its election to use such inventory method. The statement shall be made on Form 970.

Under section 301.9100-1(c), the Commissioner has discretion to grant a reasonable extension of the time to make a regulatory election under all subtitles of the Code except subtitles E, G, H, and I, provided that the taxpayer acted reasonably and in good faith and granting relief will not prejudice the interests of the Government. Section 301.9100-1(b) defines a regulatory election as an election whose due date is prescribed by a regulation published in the Federal Register, or a revenue ruling, revenue procedure, notice, or announcement published in the Internal Revenue Bulletin. Section 301.9100-1(b) also defines an election to include an application for relief in respect to tax, or a request to adopt, change, or retain an accounting method or accounting period.

Section 301.9100-2 sets forth rules governing automatic extensions for regulatory elections. If the provisions of section 301.9100-2 do not apply to a taxpayer's situation, the provisions of section 301.9100-3 may apply.

Section 301.9100-3 sets forth the standards that the Commissioner will use in determining whether to grant an extension of time to make a regulatory election that does not meet the standards of section 301.9100-2. It also sets forth information and representations that the taxpayer must furnish to enable the Internal Revenue Service to determine whether the taxpayer has satisfied these standards. The applicable standards are whether the taxpayer acted reasonably and in good faith and whether granting relief would prejudice the interests of the Government.

Under section 301.9100-3(b)(1)(i), a taxpayer that applies for relief for failure to make an election before the failure is discovered by the Service ordinarily will be deemed to have acted reasonably and in good faith. However, the taxpayer will not be considered to have acted reasonably and in good faith if the taxpayer seeks to alter a return position for which an accuracy-related penalty has been or could be imposed under section 6662 at the time the taxpayer requests relief and the new position requires or permits a regulatory election for which relief is requested. Additionally, if the taxpayer was informed in all material respects of the required election and related tax consequences but chose not to file the election, or uses hindsight in requesting relief, the taxpayer ordinarily will not be considered to have acted reasonably and in good faith. Section 301.9100-3(b)(3).

Section 301.9100-3(c)(1)(i) provides that the interests of the Government are prejudiced if granting relief would result in a taxpayer having a lower tax liability in the aggregate for all taxable years affected by the regulatory election than the taxpayer would have had if the election had been timely made (taking into account the time value of money). Likewise, when the tax consequences of more than one taxpayer are affected by the election, the Government's interests are prejudiced if extending the time for making an election may result in the affected taxpayers, in the aggregate, having a lower tax liability than if the election had been timely made.

Further, the interests of the Government are ordinarily prejudiced if the taxable year in which the regulatory election should have been made or any taxable years that would

have been affected by the election had it been timely made are closed by the period of limitations on assessment under section 6501(a) before the taxpayer's receipt of a ruling granting relief under section 301.9100-3. Section 301.9100-3(c)(1)(ii).

Conclusion

The information and representations submitted by Parent (and accompanied by a penalty of perjury statement executed by an appropriate party) establish that it and Taxpayer have acted reasonably and in good faith in this request. Furthermore, granting an extension will not prejudice the interests of the Government. Accordingly, an extension of time is hereby granted for Parent to file the necessary Form 970. This extension shall be for a period of 30 days from the date of this ruling. Please attach a copy of this ruling to the Form 970 when it is filed.

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter. Specifically, we express no opinion as to the inventory methods used by either Parent or Taxpayer. Furthermore, we express no opinion as to whether section 381(a) was properly applied in Parent's Year 2 merger between itself and Taxpayer.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to Parent's authorized representatives.

The ruling contained in this letter is based upon information and representations submitted by Parent and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for ruling, it is subject to verification on examination.

Sincerely,

Roy A. Hirschhorn
Chief, Branch 6
Office of Associate Chief Counsel
(Income Tax & Accounting)

Enclosure (1)

Copy of letter for section 6110 purposes

cc: